

why the determination is inaccurate or incomplete and provide any new and relevant information not previously considered. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration.

(f) After reviewing the matter, including any relevant supporting documentation, the Under Secretary for Health will issue a written determination that affirms or reverses the previous determination. If the Under Secretary for Health decides that the State home facility or program management does not meet the standards of subpart D of this part, the Under Secretary for Health will withdraw recognition and stop paying per diem for care provided on and after the date of the decision. The decision of the Under Secretary for Health will constitute a final VA decision. The Under Secretary for Health will send a copy of this decision to the State home facility and to the State official authorized to oversee the operations of the State home.

(g) In the event that a VA survey team or other VA medical center staff identifies any condition at the State home facility that poses an immediate threat to public or patient safety or other information indicating the existence of such a threat, the director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1-22), Assistant Deputy Under Secretary for Health (10N), Chief Consultant, Geriatrics and Extended Care Strategic Healthcare Group (114), and State official authorized to oversee operations of the State home.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900–0160.)

Subpart C—Per Diem Payments

§ 52.40 Monthly payment.

(a)(1) During Fiscal Year 2002, VA will pay monthly one-half of the total cost of each eligible veteran's adult day health care for each day the veteran is in a facility recognized as a

State home for adult day health care, not to exceed \$34.64 per diem.

(2) Per diem will be paid only for a day that the veteran is under the care of the facility at least six hours. For purposes of this paragraph a day means

(i) Six hours or more in one calendar day; or

(ii) Any two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.

(3) As a condition for receiving payment of per diem under this part, the State must submit a completed VA Form 10-5588, "State Home Report and Statement of Federal Aid Claimed." This form is set forth in full at 38 CFR 58.11.

(4) Initial payments will not be made until the Under Secretary for Health recognizes the State home. However, payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey of the facility that provided the basis for determining that the facility met the standards of this part.

(5) As a condition for receiving payment of per diem under this part, the State must submit to the VA medical center of jurisdiction for each veteran the following completed VA forms: 10-10EZ, "Application for Medical Benefits", and 10-10SH, "State Home Program Application for Care—Medical Certification", at the time of enrollment and with any request for a change in the level of care (nursing home, domiciliary or hospital care). These forms are set forth in full at 38 CFR 58.12 and 58.13, respectively. If the program is eligible to receive per diem payments for adult day health care for a veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this paragraph (a)(5), except that VA will pay per diem from the day on which the veteran was enrolled in the program if VA receives the completed forms within 10 days after enrollment.

(b) For determining "the one-half of the total cost" under paragraph (a)(1) of this section, total per diem costs for an eligible veteran's adult day health care consist of those direct and indirect costs attributable to adult day health care at the facility divided by

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the total number of participants enrolled in the adult day health care program. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A-87, dated May 4, 1995, "Cost Principles for State, Local, and Indian Tribal Governments" (OMB Circulars are available at the addresses in 5 CFR 1310.3).

(Authority: 38 U.S.C. 101, 501, 1741-1743)

(The Office of Management and Budget has approved the information collection requirements in this paragraph under control number 2900-0160.)

§ 52.50 Eligible veterans.

A veteran is an eligible veteran under this part if VA determines that the veteran meets the definition of a veteran in 38 U.S.C. 101, is not barred from receiving this VA care under 38 U.S.C. 5303-5303A, needs adult day health care, and is within one of the following categories:

- (a) Veterans with service-connected disabilities;
- (b) Veterans who are former prisoners of war;
- (c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;
- (d) Veterans who receive disability compensation under 38 U.S.C. 1151;
- (e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;
- (f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for adult day health care is provided for in the judgment or settlement described in 38 U.S.C. 1151;
- (g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);
- (h) Veterans of the Mexican Border period or of World War I;
- (i) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e);
- (j) Veterans who agree to pay to the United States the applicable co-pay-

ment determined under 38 U.S.C. 1710(f) and 1710(g), if they seek VA (U.S. Department of Veterans Affairs) hospital, nursing home, or outpatient care.

(Authority: 38 U.S.C. 101, 501, 1741-1743)

Subpart D—Standards

§ 52.60 Standards applicable for payment of per diem.

The provisions of this subpart are the standards that a State home and program management must meet for the State to receive per diem for adult day health care provided at that facility.

§ 52.61 General requirements for adult day health care program.

Adult day health care must be a therapeutically-oriented outpatient day program, which provides health maintenance and rehabilitative services to participants. The program must provide individualized care delivered by an interdisciplinary health care team and support staff, with an emphasis on helping participants and their caregivers to develop the knowledge and skills necessary to manage care requirements in the home. Adult day health care is principally targeted for complex medical and/or functional needs of geriatric patients.

(Authority: 38 U.S.C. 101, 501, 1741-1743)

§ 52.70 Participant rights.

The participant has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. The program management must protect and promote the rights of each participant, including each of the following rights:

- (a) *Exercise of rights.* (1) The participant has the right to exercise his or her rights as a participant of the program and as a citizen or resident of the United States.
- (2) The participant has the right to be free of interference, coercion, discrimination, and reprisal from the program management in exercising his or her rights.
- (3) The participant has the right to freedom from chemical or physical restraint.